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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,958	01/25/2001	Hans Heid	(Z) 98017 P US	7016
7590	11/26/2003		EXAMINER	DEXTER, CLARK F
M. Robert Kestenbaum 11011 Bermuda Dunes NE Albuquerque, NM 87111			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/770,958	Applicant(s) Heid	
	Examiner Clark F. Dexter	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Sep 12, 2003

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.

4a) Of the above, claim(s) 8-10 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7, 11, and 12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on Mar 21, 2003 is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

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DETAILED ACTION

1. The amendment filed September 12, 2003 has been entered. Although the amended claims remain improper because all of the changes made with respect to the last official version (i.e., the version filed March 21, 2002) are not shown, the cumulative changes shown in the responses submitted since that amendment are believed to sufficiently show the changes made. Therefore, the amendment has been accepted and entered.

Priority

2. Receipt is acknowledged of the papers entitled "Submission of Certified Priority Document," which papers were filed July 7, 2003 and have been placed of record in the file.

Drawings

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 21, 2003 have been approved-in-part.

The proposed drawing correction for Figure 5 has been **approved**.

The proposed drawing correction for Figure 1 is not approved because it appears to be inaccurate, particularly since the lead line for numeral 100 appears to indicate the cutting knife which is already indicated by numeral 4. It is suggested to relocate numeral 100 and use an arrowheaded lead line to indicate the knife holder.

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A proposed drawing correction or corrected drawings for Figure 1 only is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities:

On page 7, line 15, it seems that a numeral (e.g., 100) should be inserted after "knife holder" or the like for clarity.

On page 8, line 13, it seems that a numeral such as numeral (8) should be inserted after "blade guard" or the like.

On page 10, line 9, a numeral should be inserted after "base member" for clarity; in line 18, a numeral such as numeral (17) should be inserted after "electromagnet" or the like.

On page 12, lines 5-6, and in line 8, each occurrence of the recitation "base portion (34) of the knife holder" appears to be inaccurate, and it seems that each occurrence should read -- base portion of the knife holder (34)-- or the like.

Appropriate correction is required.

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Claim Rejections - 35 USC § 112

5. Claims 1-7, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 4-5, the recitation “spaced apart from said cutting plane” is vague and indefinite since the location of the cutting plane has not been positively defined in terms of the claimed features of the invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 6, 7 and 11, as understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fassin, pn 1,925,181.

Fassin discloses a microtome comprising a knife holder, wherein the knife holder comprises a knife (e.g., 15) having a cutting edge defining a cutting plane, wherein the knife is disposed on one side of the cutting plane; a blade guard comprising a plate (e.g., 22 including portion 24), wherein the plate is arranged on the same side of the cutting plane as the knife (e.g., see portion 24 in Figure 3) and is spaced apart from the cutting plane to the side of the knife in

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such a way that in a functional position of the blade guard (e.g., the functional position shown in Figure 3), a small gap is provided between the cutting edge of the knife and the edge of the plate with a maximum width chosen such that the joint of a person's finger cannot come into contact with the cutting edge of the knife.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fassin, pn 1,925,181.

Regarding claim 3, Fassin lacks the plate comprising a transparent material. However, the Examiner takes Official notice that it is old and well known in the art to make guard plates transparent for various known benefits including reducing obstructed views during use of a device or for aesthetic benefits. Therefore, it would have been obvious to one having ordinary skill in the art to make the guard of Fassin transparent for the well known benefits including those described above.

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Regarding claims 5 and 12, Fassin lacks a switch and the plate coupled thereto.

However, the Examiner takes Official notice that it is old and well known in the art to provide switches for various reasons including lock switches to lock a member in place and/or to release a member. Therefore, it would have been obvious to one having ordinary skill in the art to provide a switch coupled to the plate of Fassin for the well known benefits including those described above.

Response to Arguments

10. Applicant's arguments filed September 12, 2003 and March 22, 2003 have been fully considered but they are not persuasive. The Examiner respectfully submits that the prior art meets the claimed invention as further explained in the prior art rejection above.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers Technology Center 3700 are: after-final responses - (703)872-9303; other formal/official papers - (703)872-9302. The fax number for informal/draft papers - (703)305-9835.



Clark F. Dexter
Primary Examiner
Art Unit 3724

cfd
November 25, 2003